

REMARKS

This Amendment is submitted in reply to the non-final Office Action mailed on June 28, 2006. No fee is due in connection with this Amendment. The Director is authorized to charge any fees which may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 112701-696 on the account statement.

Claims 1-6 are pending in this application. In the Office Action, Claims 4 and 6 are objected to, Claims 1-4 are rejected under 35 U.S.C. §101, Claims 1-4 are rejected under 35 U.S.C. §112, second paragraph, Claims 1-6 are rejected under 35 U.S.C. §102 and Claims 1-6 are rejected under obviousness-type double patenting. In response Claims 1-5 have been amended, Claim 6 has been canceled and Claims 7-9 have been added. This amendment does not add new matter. In view of the amendment and/or for the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claims 4 and 6 are objected to. In response, Applicants have amended Claims 4 and 6 to address the informalities cited by the Patent Office. Accordingly, Applicants respectfully request that the objection to Claims 4 and 6 be withdrawn.

In the Office Action, Claims 1-4 are rejected under 35 U.S.C. §101 as allegedly setting forth improperly claimed subject matter. In response, Claim 1-4 have been amended to address the informalities cited by the Patent Office. Based on at least these noted reasons, Applicants believe that Claims 1-4 fully comply with 35 U.S.C. §101.

Accordingly, Applicants respectfully request that the rejection of Claims 1-4 under 35 U.S.C. §101 be withdrawn.

In the Office Action, Claims 1-4 are rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. In response, Claim 1-4 have been amended to address the informalities cited by the Patent Office. Based on at least these noted reasons, Applicants believe that Claims 1-4 fully comply with 35 U.S.C. §112, second paragraph.

Accordingly, Applicants respectfully request that the rejection of Claims 1-4 under 35 U.S.C. §112 be withdrawn.

In the Office Action, Claims 1-6 are rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 6,207,638 to Portman (“*Portman*”). Applicants respectfully disagree with and traverse this rejection for at least the reasons set forth below.

Applicants have amended independent Claim 1 to recite, in part, a method comprising administering to the person a composition comprising intact whey proteins in an amount ranging from 21 to 40% by total dry weight of the composition. The amendment is supported in the specification, for example, at page 4, lines 26-30. Applicants have amended independent Claim 5 to recite, in part, a method comprising administering intact whey proteins in an amount of 0.1 to 0.8 g intact whey proteins per kg body weight. The amendment is supported in the specification, for example, at page 5, lines 28-30. In contrast, Applicants respectfully submit that *Portman* fails to disclose or suggest every element of Claims 1 and 5.

For example, *Portman* fails to disclose or suggest a method comprising administering to the person a composition comprising intact whey proteins in an amount ranging from 21 to 40% by total dry weight of the composition as required, in part, by Claim 1. Similarly, *Portman* fails to disclose or suggest a method comprising administering intact whey proteins in an amount of 0.1 to 0.8 g intact whey proteins per kg body weight as required, in part, by Claim 5.

Moreover, *Portman* fails to disclose or suggest any methods for treating, preventing and/or improving metabolic dysfunctions or conditions associated with Type 2 diabetes mellitus in a person in need of same as required, in part, by the present claims. Instead, *Portman* is entirely directed to a nutritional intervention composition that enhances and extends satiety in a calorically efficient manner. See, *Portman*, column 4, line 66 to column 5, line 4.

In accordance with embodiments of the present invention, Applicants have surprisingly found that intact whey proteins significantly increase the production and/or secretion of insulin. For instance, administering to a person an effective amount of intact whey proteins enhances post-prandial insulinemia and/or decreases blood glucose levels. *Portman* fails to disclose or even suggest same. For at least the reasons discussed above, Applicants respectfully submit that Claims 1 and 5 and Claims 2-4 that depend from Claim 1 are novel, nonobvious and distinguishable from the cited reference.

Accordingly, Applicants respectfully request that the rejection of the claims under 35 U.S.C. §102 be withdrawn.

In the Office Action, Claims 1-6 have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting over Claims 1-6 of copending Application 10/562,460 in view of *Portman*. Applicants respectfully submit that, at this state of the prosecution, it would be premature to file a terminal disclaimer because the instant claims have not yet been allowed, and thus, the final version of these claims is not yet known. However, upon allowance of pending Claims 1-6, Applicants will consider filing a terminal disclaimer relative to Application 10/562,460.

Applicants further note that Claims 7-9 have been newly added. No new matter has been added thereby. The new claims are fully supported in the specification, for example, at pages 6-7. Applicant respectfully submits that Claims 7-9 should be allowed.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

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